



N A R U C
National Association of Regulatory Utility Commissioners

December 15, 1999

The Honorable Thomas J. Bliley, Jr.
Chairman
House Commerce Committee
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 2944 - Electric Competition and Reliability Act

Dear Chairman Bliley:

Thank you for your letter requesting the views of the National Association of Regulatory Utility Commissioners (NARUC). I have attached an analysis of the Electricity Competition and Reliability Act (H.R. 2944), as reported from the Energy and Power Subcommittee of the House Commerce Committee. This analysis includes policy positions taken by the membership of NARUC with regard to retail electric competition and the provisions currently found in H.R. 2944. The NARUC positions found in the attached document are in bold typeface. NARUC is a nonprofit association representing State public utility commissioners from all Fifty States, the District of Columbia and U.S. territories. On behalf of the NARUC membership I wish to express our sincere appreciation to you for availing us this opportunity to express our views.

H.R. 2944 contains many elements that we support, including the decision to not require a "date certain mandate;" preserving State authority over the determination and recovery of stranded costs; language that establishes regional advisory bodies for reliability; and the Wynn/Ehrlich grandfather provision that was added to the legislation during the Subcommittee mark-up. Additionally, we are pleased that the reciprocity provisions were removed from the legislation by the Stearns amendment.

However, we would like to bring to your attention provisions found in H.R. 2944 which continue to cause concern. It is our hope that these issues can be satisfactorily addressed during Commerce Committee deliberations.

NARUC believes legislation should recognize and affirm the valuable, long standing, and successful role of the States in ensuring reliability of all aspects of electrical service, including generation and power delivery services. The inclusion of the regional advisory body provision helps to move the legislation closer to the point where the States would have the ability to protect the health, safety, and welfare of its citizens.

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However, some transmission systems within an interconnection have severe local limitations that require special attention in order to maintain reliability. NARUC urges the Commerce Committee to include language in H.R. 2944 that gives the States the means to ensure that reliability does not suffer. NARUC would respectfully request that our State savings clause be added to H.R. 2944. I have also attached a copy of this provision for your consideration.

The jurisdictional delineation found in H.R. 2944, we believe, needs to be further clarified. NARUC has consistently urged that legislation should affirm State jurisdiction over components of the retail market and FERC jurisdiction should be focused on components of the wholesale market. Instead, H.R. 2944 codifies FERC Order 888's seven factor test for distinguishing State and Federal authority. We believe that the seven factor test is unnecessarily burdensome and increasingly unworkable.

We are pleased that the legislation allows States to prescribe public benefits programs that are in the best interest of their citizens. However, the legislation should include a positive Federal role. Federal support should be made available to assist and encourage the States to develop and implement public purpose programs that meet the needs of the States and the nation. A State-Federal partnership to support State and utility public benefits programs such as energy efficiency, renewable energy technologies, research and development, and low-income assistance should be considered as a positive addition to H.R. 2944.

NARUC believes that access to the electric market by small-scale distributed resources can offer public benefits by mitigating market power, furthering innovation, easing transmission and distribution constraints, increasing resource diversity, and expanding customer choice. Therefore, NARUC supports State policies to eliminate barriers to interconnection. However, the States need to have the authority and flexibility to adapt national standards to local conditions. Currently, H.R. 2944 does not include language that would give States the authority to implement interconnection policies that make sense for the unique circumstances that individual States confront. We believe that such authorizing language should be added to H.R. 2944.

A Federal and State role is essential to ensure that consumers are protected in a restructured electric market. NARUC supports further consultation between Federal agencies and State commissions to produce enforceable uniform standards for information disclosure and product labeling. NARUC also supports language that affirms State authority to enforce consumer protection standards, including but not limited to remedies for "slamming" and "cramming," and that allows States to implement more stringent consumer protection policies than are prescribed in Federal legislation.

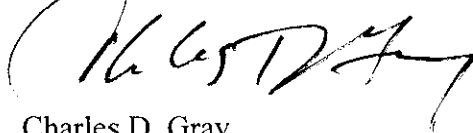
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With regard to PUHCA and PURPA repeal, we believe that H.R. 2944 should provide mechanisms to maintain State and Federal authority over holding company practices and to preserve consumer protection provisions of the 1992 Energy Policy Act and the 1996 Telecommunications Act. Additionally, NARUC supports the cost-effective use of renewable energy resources and cogeneration for wholesale power supply subject to State determinations on the terms and length of contracts, prices, and whether mandatory purchase requirements are necessary. We oppose, however, giving FERC the authority to require State commissions to include in retail rates 100 percent of any stranded costs resulting from existing PURPA contracts. These are retail matters best left to the States to include as part of the wide variety of matters that go into the setting of customer rate levels.

Finally, I would like to address market power remedies, an issue which does not appear in H.R. 2944. We believe that the States are capable of resolving market power issues, provided legislation clarifies that State regulators have the authority to do so. States that have restructured their respective electricity industries are already meeting this challenge head on. We believe that Federal legislation in this area should build upon what they are already accomplishing, and not disrupt State progress through new preemptive Federal authority.

In conclusion, let me thank you again, Mr. Chairman, for this opportunity to comment. As the legislative process moves forward, NARUC will keep you and your staff informed concerning the Association's positions as our members reach consensus on any remaining issues or revisit existing positions. We look forward to working with you and your staff as H.R. 2944 moves forward. Please do not hesitate to contact me should you have any additional requests or questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Gray", written over a horizontal line.

Charles D. Gray
Executive Director and General Counsel

Attachments

cc: All members of the U.S. House of Representatives Commerce Committee

H.R. 2944, “The Electricity Competition and Reliability Act”

Provisions Affecting State Regulatory Commissions

12/14/99

Sec. 3 -- State Laws or Regulations Not Affected

1. “Grandfather” of State law or regulatory order regarding consumer protection, interconnection aggregation and net metering enacted prior to or within 3 years of the date of enactment of this Act

NARUC supports “grandfathering” of State provisions

Title I – Open Transmission Access

Sec. 101 -- 1. States can require retail competition and unbundling

NARUC supports legislation affirming State authority to implement retail competition

2. Exclusive jurisdiction over unbundled retail transmission goes to FERC

NARUC supports legislation affirming State authority to regulate retail power delivery regardless of facilities used (transmission or distribution). NARUC opposes the expansion of FERC jurisdiction to include unbundled retail transmission services

3. FERC is specifically denied jurisdiction over bundled retail sales of electricity (including any component thereof) subject to State regulation

NARUC supports legislation affirming State authority to regulate retail power delivery regardless of facilities used (transmission or distribution)

4. States can impose a charge on retail services for public purpose programs with nonexclusive list of purposes

NARUC supports legislation affirming State authority to impose non-bypassable charges and to promote energy efficiency, renewables, and low-income assistance. In addition, NARUC supports the inclusion in legislation of workable mechanisms to support State public benefits programs that consider a Federal-State partnership, broad-based competitively neutral funding mechanisms, and Federal

support. NARUC also supports funding for public purpose research and development programs based upon taxes and tax credits and non-bypassable system charges

5. A State commission, transmitting utility, or local distribution company may apply to FERC for decision as to character of power delivery facilities – i.e. whether transmission (FERC-jurisdictional) or distribution (State-jurisdictional). FERC uses Order 888 seven factor test, but shall consider any position taken by the appropriate State commission

NARUC has expressed serious reservations concerning the workability of the Order 888 test. NARUC supports legislation to authorize States to form voluntary regional bodies to define the character of transmission facilities

6. Does not preempt application of State utility laws and regulation regarding retail sales of electric energy to Federal facilities

NARUC has been a longstanding supporter of Federal legislation that preserves State jurisdiction over retail services provided to Federal facilities

- Sec. 102 --
1. Extends FERC jurisdiction to “transmitting utilities” defined as “any entity (including State or municipality) that owns or operates facilities used for transmission” of electricity and authorizes FERC to address recovery of stranded wholesale costs

NARUC has no position on the extension of FERC jurisdiction to non-jurisdictional entities (coops, munis, PMAs etc.) or wholesale stranded cost recovery. NARUC opposes FERC authority over the recovery of retail stranded costs

2. Authorizes FERC to order retail transmission services on behalf of retail customers served by an open access distribution company

NARUC has no specific position on this issue, but supports Federal transmission policies that assist States in voluntarily opening retail markets

3. Directs FERC to adopt rules to exempt small transmitting utilities (e.g. small municipal and cooperative systems) from open access requirements

NARUC has no position on this issue

- Sec. 103 --
1. RTO membership encouraged but voluntary. FERC must approve an RTO that meets certain standards
 2. One or more transmitting utilities may constitute an RTO; FERC barred from requiring a transmitting utility that applies to participate in an RTO to participate in a different RTO; RTO must be independent (5 percent or less of the voting interest in the RTO) of all market participants

NARUC supports legislation leading to the voluntary formation of ISOs, but in the event voluntary action is not effective, also supports consideration of legislation to clarify authority of State and Federal regulators to require that transmission owners transfer control of systems to ISOs where necessary to ensure a competitive market. NARUC supports legislation authorizing formation of voluntary regional bodies to address transmission system issues

3. Savings clause to allow State commission to address transmission issues (maintenance, planning, siting) "in a manner consistent with" the FPA and FERC decisions thereunder

NARUC supports legislation affirming the authority of States to regulate retail power delivery services regardless of facilities used

4. Provides that nothing in this subsection authorizes FERC to require changes in RTO or comparable transmission organization approved by FERC or in operation prior to enactment

See number 2 of this section

- Sec. 104 --
1. Congress authorizes formation of interstate compacts for regional transmission siting

NARUC supports legislation authorizing formation of voluntary regional bodies to address transmission system issues such as the definition of transmission and distribution facilities, operation of transmission systems (including supervision of ISOs and PXs), system planning, transmission pricing and facilities siting. NARUC opposes preemption of State siting authority

2. FERC to determine whether State – proposed compact meets statutory requirements

NARUC's policy on voluntary regional bodies does not include FERC approval or oversight

3. FERC to issue rules to govern compact formation

NARUC's policy on voluntary regional bodies does not include FERC approval or oversight

Sec. 105 --

1. FERC to order expansion of transmission facilities, subject to State and local laws concerning property rights and siting, upon utility application

NARUC does not support FERC authority to order expansion of transmission facilities if that authority preempts State authority over siting, system planning or retail power delivery services

2. FERC must convene joint board to get recommendations before transmission expansion may be ordered

NARUC has a long history in support of FERC authority to convene joint boards under section 209 of the FPA

3. FERC shall permit transmitting utilities to recover all transmission costs, directs FERC to consider incremental cost and benefit of new transmission facilities when setting rates

NARUC supports continued State authority to regulate retail services including the identification, allocation and recovery of costs of transmission services provided on behalf of retail ratepayers

4. Mandates that transmission rates:(1) be just and reasonable and not unduly discriminatory or preferential (2) promote economically efficient transmission, expansion of networks, introduction of new transmission technologies and the provision of transmission services by RTOs

NARUC supports transmission rates that are just and reasonable and are not unduly discriminatory or preferential, but believes the States must continue to have a role in the process of transmission improvement, pricing and policy

5. FERC shall encourage innovative pricing policies for transmitting utilities, including policies that: (1) provide incentives to form RTOs; (2) limit the charging of pancaked rates; (3) minimize cost shifting among existing customers; (4) encourage efficient and reliable operation of the transmission system; (5) encourage efficient and adequate investment in and expansion of transmission facilities controlled or owned by RTOs

NARUC has no position on incentive pricing for transmission services.

6. Authorizes FERC to approve negotiated transmission rates

NARUC has no position on negotiated rates but supports State involvement in the process

7. Authorizes FERC to approve market – based transmission rates, if it finds markets for wholesale power or transmission are subject to effective competition

No position

8. Directs FERC to establish by rule definitions and standards to govern its review of performance – based or incentive rates

No position

9. Directs FERC to report to Congress on FERC policies that encourage “economic use” and expansion of the transmission network through incentive rates and “other similar market – oriented approaches”

No position

10. Directs FERC to submit a report to Congress comparing financial returns on transmission investment to returns earned by companies from other industrial sectors

No position

- Sec. 107 --
1. A State savings clause which provides that nothing in the bill preempts, overrides, or requires any changes to State retail access plans adopted prior to or within three years of enactment to the extent that such plans address matters within State jurisdiction

NARUC supports “grandfathering” State retail access plans

Title II – Reliability

- Sec. 201 -- 1. Includes NERC “consensus” draft from February 1999 with some variations

NARUC supports legislation establishing mandatory compliance with industry-developed reliability standards and providing explicit authority to FERC and the States to cooperate to enforce those standards. NARUC also supports legislation that includes workable mechanisms to support energy efficiency programs that enhance reliability

2. Includes savings clause for State authority over reliability of local distribution facilities

NARUC cannot support reliability legislation that fails to provide a continuing role for States in ensuring reliability of all aspects of electrical service, including generation, transmission, and power delivery services or results in FERC preemption of State authority to ensure safe and reliable service to retail consumers. NARUC is concerned that a savings clause limited only to “local distribution” could actually be harmful to consumers since it: (1) creates confusion over the responsibility to review service disruptions; (2) implicitly supports the view that legislation preempts State regulation of nondistribution related reliability; and (3) raises the question that NERC (a non-governmental entity) might otherwise cover distribution issues

3. Directs FERC to establish regional advisory bodies

NARUC requested and supports the inclusion of this provision. NARUC also continues to support a savings clause to protect existing State authority to ensure reliable transmission service

Title III – Consumer Protection

- Sec. 301 -- 1. FTC to issue rules for disclosure to retail consumers – price, quality, other charges, generation source, emissions. Requires FTC to consult with FERC, DOE and EPA

NARUC supports initiatives leading to minimum, enforceable uniform standards for disclosure and labeling. NARUC supports consultation with State commissions as well

2. Savings clause for State disclosure rules that “are not inconsistent with” FTC requirements

NARUC urges States to include enforceable disclosure and labeling standards in retail access programs

- Sec. 302 --
1. FTC to issue rules to protect retail consumer privacy
 2. The rules shall not prohibit disclosure of consumer information to facilitate consumer’s change in selection of a supplier under procedures approved by a State or State commission
 3. Savings clause for State disclosure rules that “are not inconsistent with” FTC requirements

NARUC has no specific position on consumer privacy issues, but supports legislation that affirms exclusive State jurisdiction over terms and conditions of retail service

- Sec. 303 --
1. FTC to issue rules against slamming and cramming
 2. Savings clause for State disclosure rules that “are not inconsistent with” FTC requirements

NARUC has no position on slamming/cramming issues but supports language that affirms State authority to ensure adherence to consumer protection standards, including but not limited to “slamming” and “cramming,” and permits States to implement more stringent consumer protection policies than are prescribed in Federal legislation.

- Sec. 304 --
1. Expresses sense of Congress that States should ensure universal service to all consumers, including rural, residential and low-income

NARUC’s restructuring principles assert that universal service should be maintained

Title IV – Mergers

- Sec. 401 --
1. FERC cannot review mergers and asset sales by generation – only companies, cooperatives, State and municipal utilities, and Federal electric utilities; FERC review of holding company mergers not affected

2. Establishes a 180 day time limit for FERC review of mergers, asset sales, dispositions by public utilities and waives the requirement that a public utility obtain FERC approval for such actions if FERC does not act within time limit

NARUC supports a Federal merger policy where both Federal and State regulators thoroughly evaluate mergers to assess their impact on competition, access to transmission facilities and ultimately on electric rates. NARUC supports merger policy where State commissions assess retail impacts. NARUC supports exclusive State authority over retail services and facilities

Title V – Promoting Competition

Secs. 501-
514 --

1. Repeals PUHCA 12 months after enactment using “standard 524 provisions,” i.e. FERC and State access to books and records where necessary to “identify costs,” reversal of *Ohio Power* decision. Authorizes FERC to exempt holding companies from Federal books and records requirements

NARUC supports reform or repeal of PUHCA as competition becomes effective under comprehensive legislation. NARUC supports mechanism that maintains State and Federal authority over holding company practices and preserves consumer protection provisions of recent legislation – the 1992 Energy Policy Act and the 1996 Telecommunications Act. NARUC supports reversal of *Ohio Power* decision and State access to books and records. NARUC opposes granting FERC authority to exempt companies from State books and records requirements

Secs. 521-
523 --

1. Prospectively repeals PURPA while preserving existing contracts

NARUC supports legislation to lift PURPA’s purchase requirement where a State determines that generating markets are competitive or that the public interest in resource acquisition is protected

2. FERC to issue regulations preempting State authority over recovery of PURPA contract costs

NARUC opposes FERC authority to order the recovery of costs in retail rates. States that originally approved these contracts are in a better position to address this issue than FERC.

- Sec. 531 --
1. Authorizes aggregation of acquisition of power by retail consumers in States with open retail markets
 2. No State may prohibit any political subdivision or electric cooperative from aggregating consumers if the cooperative or political subdivision provides open access to any local distribution facilities that it may own or operate

NARUC has no position on aggregation, but supports exclusive State authority over the regulation of rates, terms and conditions of retail electric services

- Sec. 532 --
1. FERC to issue regulations requiring local distribution utility to interconnect with distributed generation facilities, presume preemption of State interconnection policies
 2. Removes cap on distributed generation facility and limits such facilities to interconnection with distribution facilities
 3. Bars FERC from requiring an increase in distribution capacity as part of a transmission interconnection
 4. Directs FERC to establish safety and power quality standards for interconnection with transmission facilities and to establish an advisory committee to develop such standards

NARUC urges State commissions to remove unnecessary barriers to interconnection. However, the States need to have the authority and flexibility to adapt standards to local conditions. Currently, H.R. 2944 does not include language that would give States the authority to implement interconnection policies that make sense for the unique circumstances that individual States confront. We believe that such authorizing language should be added to H.R. 2944. Additionally, NARUC supports the removal of both reciprocity provisions from this Title

Title VI – Federal Utility Provisions (TVA, BPA)

1. Extends FERC authority to transmission systems, wholesale power sales of Federal utilities
2. Establishes other conditions on operation of Federal utilities

NARUC has no position on these issues

Title VII – Environmental Provisions

- Sec. 701 --
1. Establishes renewable energy production incentive of 1.5 cents per kwh to small hydroelectric (less than 30 MW), solar, wind, biomass and geothermal technologies

NARUC supports inclusion of legislative provisions affirming national commitment to continued commercialization and supply of renewables. If Congress adopts minimum national standards, NARUC supports use of tradeable credits as one market-compatible mechanism, among others. State should have flexibility to apply and supplement any Federal standards

- Sec. 702 --
1. Requires retail electric suppliers to provide net metering services
 2. Savings clause for State requirements “consistent with the requirements in this section.” Allows State to impose cap on net metering

NARUC urges State commissions and legislatures to adopt net metering measures and requests Congress and FERC to remove barriers to State implementation of net metering

- Sec. 703 --
1. Provides that nothing in this bill or any other Federal law affects the authority of States to require a renewable portfolio standard

NARUC supports State authority over retail policies and services

Title VIII – Internal Revenue Code Provisions

- Sec. 801 --
1. Removes tax restrictions on co-ops provision of open access transmission services, retail competition

NARUC has no position on this issue

- Sec. 802 -- 1. Removes “private use” restrictions on tax-exempt bonds of municipal systems providing open access transmission, ISO membership, retail competition

NARUC has no position on this issue

- Sec. 803 -- 1. Allows deductions of nuclear decommissioning costs by utility subject to non-cost-based regulation

NARUC supports legislation to allow deductibility of decommission costs in restructured utility industry

- Sec. 804 -- 1. Extends the renewable energy tax credit for wind and closed-loop biomass

NARUC has supported production tax credit for renewable technologies

Title IX – Miscellaneous Provisions

- Sec. 901 -- 1. DOE to prepare report to Congress in 2 years on actions taken by States to remove barriers to interstate commerce in electricity and recommendations for further congressional action

NARUC has no position on this issue

- Sec. 902 -- 1. FERC shall study State regulation of transmission component of unbundled retail sales and submit report to Congress. The study shall examine whether such regulation results in undue discrimination or preference in transmission of electricity in interstate commerce or sale of electricity at wholesale in interstate commerce and make recommendations for amendments to Federal law.

NARUC has no position on this issue

Amendment to H.R. 2944: Title II Electric Reliability to Preserve State Role

Section (xx) – Savings Clause

Nothing in this section shall be construed to preempt the authority of a state to take action to ensure the reliability, adequacy, or safety of electric facilities within the state except where the exercise of such authority has a material adverse impact on the reliable operation of the bulk power system.

Proposed Report Language

Since the North American Electric Reliability Council was established in the mid-1960s, electric reliability standards and procedures were conducted through voluntary industry actions subject to the regulatory authority of State regulatory commissions. As a result, utility planning to ensure reliable service and the utility investments necessary to implement these plans were fully subject to review and approval by State regulators. This system gave the United States the most reliable electric services in the world, while allowing for State commissions to adapt North American reliability standards and procedures to local and regional needs and conditions.

The proposed reliability legislation would convert the voluntary program of the past to a self-regulatory reliability organization (SRRO) subject to the regulatory authority of the Federal Energy Regulatory Commission (FERC). It is not the intent of Congress that FERC's authority to approve reliability standards developed by the NAERO or take action to enforce compliance with such standards would displace the legitimate interests of the States in ensuring reliable electric services for their citizens. The purpose of this savings clause is to clarify that with the passage of this legislation, States retain authority under State law to take the following actions:

- establish and enforce standards to ensure the adequacy of electric facilities within the State;
- investigate and resolve complaints concerning the reliability of electric services;
- establish and implement procedures for emergency response to the failure of electricity facilities and services within the States;
- investigate the causes of the failure of electricity facilities and services within the State;
- establish and implement standards for the siting of electricity facilities within the State;
- establish and enforce standards to maintain and improve the quality and safety of electricity services provided within the State; and
- impose a charge upon entities providing electricity services within the State to recover the costs of ensuring safe, reliable and adequate services.

In addition, the savings clause would allow State commissions to take actions that strengthen the NAERO standards. State actions that materially adversely affected the application of the NAERO standards would not be permissible.